

Consultation Paper on Civil Partnerships (R.111/2007)

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Introduction

This report summarises the views expressed in written responses received by the Chief Minister's Department as part of the Civil Partnerships: Green Paper public consultation.

This Green Paper addresses in the most general terms the sort of problems that will need to be considered if there is to be a change in the legislation to allow for civil partnerships. The purpose of the consultation is to provide the Legislation Advisory Panel with an opportunity to seek and consider the views of the public on the subject of civil partnerships.

The Consultation

Members of the public were invited to submit their comments in relation to the Civil Partnerships: Green Paper public consultation either by post to the Legislation Advisory Panel at the States Greffe or by sending an email to the dedicated email address: civilpartnerships@gov.je. The consultation paper was made available electronically from both the public consultation section of the States website: www.gov.je and also via the States Assembly website: www.statesassembly.gov.je. An electronic copy of the consultation paper was sent to members of the Chief Minister's Department consultation database.

The consultation period was held between 18 December 2007 and 31 March 2008. A total of 36 written responses were received from individuals, groups, representative bodies, States departments and/or companies by the closing date.

General Overview

The consultation paper outlined the consideration that the Legislation Advisory Panel has been giving to the possibility of changing the Island's legislation to allow for civil partnerships. Whilst the Advisory Panel is minded to proceed with some change to the present position, it has agreed that it would not wish to extend the right to marry to same-sex couples. Consequently, it has also agreed that further consideration should be given to the remaining options following the receipt of further information. The consultation paper invited comments, therefore, on 4 possible options:

(a) to extend the right to marry to homosexual couples

(b) to follow the route taken by the United Kingdom and create civil partnerships, which could be entered into by homosexual couples

(c) to create the right to form a civil partnership between both heterosexual and homosexual couples; and

(d) to maintain the existing position.

A number of respondents made specific comments about the four options outlined in the Green Paper and indicated their preferred option. Most submissions received, however, were broad in their approach to the issue and expressed general preferences rather than identifying particular options for the States to implement.

In this summary responses have been grouped thematically; the options are presented in the order they appeared in the Green Paper. This summary includes a representative selection of additional comments provided by respondents and any concerns that were raised regarding the consequences of any civil partnership legislation.

Since this summary is intended to provide an overview of the comments and suggestions that have been made, and for reasons of space, it does not list in detail all of the replies received.

Summary of responses

a) To extend the right to marry to homosexual couples

Option (a) attracted the smallest number of favourable responses and the equal highest number of unfavourable responses. Many respondents were concerned that 'marriage' in the religious and cultural sense might be confused with a civil partnership. The following representative comments were made:

"Option (a) was regarded as a misuse of the term marriage."

"Marriage is given by God to mankind as the basic building block of society, a relationship of companionship, sexual fulfilment and family life through the conception and birth of children. It is, both as a matter of faith and natural philosophy, heterosexual."

"I feel that society should celebrate marriage between opposite sexes only. People in same sex partnerships can arrange their own wills at present. Children are influenced from an early age and it would be alarming if it was regarded as normal in Jersey for marriages or civil partnerships between the same sexes."

In its submission, the Jersey Evangelical Alliance (JEA) stated that: *"Marriage has historically been understood as a life long commitment between a man and a woman. Its purposes included: companionship; support for one another through good times and bad; a safe and proper place to enjoy sexual relations; being the foundation of family life, in which children may be born and nurtured...We therefore fully agree with the statement in the first paragraph of the Green Paper that the right to marry should not be extended to same-sex couples."*

This view was not universal, however, and a small proportion of respondents felt it to be right that homosexual couples be allowed the same rights as heterosexual couples:

"I agree with this option unequivocally as I believe society should not set distinctions between same-sex and heterosexual couples that wish to marry. Such distinctions are

born of paranoia and breed homophobia, and therefore I urge Jersey to align itself with the countries Netherlands, Belgium, Spain, Canada and South Africa.”

“It should be as the current Dutch practice where ‘couples are entitled to register a civil partnership and gain all the rights, privileges and obligations of marriage except for the right to adopt’ as stated in the Green Paper.”

b) To follow the route taken by the United Kingdom and create civil partnerships, which could be entered into by homosexual couples

Option (b) attracted the highest number of favourable responses. A considerable number of participants felt that this was less controversial than Option (a). The following submissions were received:

“...to me this would not be an ideal situation but perhaps it will turn out to be one that Jersey can compromise on as society can accept it more readily than option a.”

“I strongly favour option 2 which puts civil partnerships on the same basis as those in the UK. I believe that this is an acceptable middle ground.”

“My view is, having seen the changing of the law in the UK, that this is a good thing, and the passing of a civil partnerships law, on the lines of the UK Civil Partnerships Act is the right step for Jersey to take, both for the people of Jersey, and for Jerseys [sic] role as part of a modern European and Worldwide community.”

“Civil Partnership would not only bring benefits to the individuals who formed civil partnerships but would also benefit society as a whole. It would do so by underlining the inherent value of committed same-sex relationships, by supporting stable families and by valuing the diversity of our society”

“The situation must be changed to mirror UK law without further delay and before Jerseys reputation suffers further.”

Some respondents raised concerns with the implementation of civil partnerships legislation in the United Kingdom and suggested that Jersey should seek to learn from some of the shortcomings that have been exposed in other jurisdictions. The following representative comments have been included:

“If it is not gay marriage, why can two sisters not register a civil partnership as a means of passing on family property etc in a tax advantageous way...the UK authorities got it wrong here and have arrived at a situation which discriminates against straightforward friendships and family relationships and in favour of sexually active same sex partnerships. So if we bring CP’s in here can we consider doing it differently from the UK?”

“Option b, follow the UK’s example, would again offer progress towards equality, but I see no reason that Jersey should simply tag along with another nations compromised legislation simply to avoid proper progress in our own right.”

c) To create the right to form a civil partnership between both heterosexual and homosexual couples

Out of the four options presented the submissions relating to Option (c) were the most evenly distributed between those in favour and those against. Some respondents

considered Option (c) to be the most impartial alternative as it allowed heterosexual and homosexual couples equal rights:

“...to create a legal process of recognition of civil partnerships separate to any religious connotations that are equal to both homosexual and heterosexual couples, is the only option that I think could be acceptable.”

“This is in my opinion the best option as it truly promotes equality for both same sex and opposite sex relationships.”

Other responses indicated that Option (c) could be implemented if Options (a) and (b) had been rejected by the Legislation Advisory Panel:

“The right to marry for heterosexual couples remains and as such I see no reason to add this particular distinction to the statute book, unless of course options (a) and (b) were unavailable.”

By contrast, some submissions expressed a level of concern about this option; the following representative comments were received:

“Option (c) would create some confusion and maybe encourage heterosexual people to enter into a partnership agreement solely based on a form of contract of interests rather than make the commitment to one another and to family life which, in our view, is most likely to lead to a stable society and a growing personal relationship.”

“Civil Partnerships by their legal nature are seen as a similar, yet competing form of relationship...Marriage is too precious, too valuable and too vital to the well being of our island community to be undermined by the introduction of unnecessary Civil Partnerships.”

d) To maintain the existing position

Option (d), to maintain the status quo, revealed sharp divisions amongst members of the public who responded to this consultation. This option attracted the equal highest number of unfavourable responses and also the second highest number of favourable responses. The following representative comments in favour of Option (d) were received:

“We have an opportunity to protect much of what is good in this island by reaffirming the traditional and long held view of the priority of marriage; let us not fail our children, our families and our community.”

“I firmly believe that the Island of Jersey should maintain the present position as being the most socially acceptable.”

“I am convinced that society should not celebrate same sex marriages; it is unfortunate that same-sex relationships are often regarded as normal or acceptable alternatives....Adults and children should not be encouraged to accept that ‘anything goes’ just because the UK and other jurisdictions have given their blessing.”

This view was not universal, however. Other respondents felt that Option (d) would be unacceptable:

“I totally disagree with this option on the grounds of human rights”

"This option would solve none of the issues. As previously stated it is totally unacceptable in this day and age that same sex relationships are treated differently to heterosexual ones."

"Doing nothing in my view is totally unacceptable."

"The law must be changed without further delay. In addition to the iniquity of the situation to those involved, it does Jersey's international reputation no good whilst the situation remains as it stands."

One visitor to the website submitted the following feedback:

"Do you honestly believe the current situation is fair and just?"

Additional Comments

A number of respondents did not express a preference for a particular option but responded instead by providing general comments about civil partnerships legislation. Some of the responses received have been included below as a useful indication of public feeling on this issue:

"My main feeling is that 'we' as the gay community should be recognised and valued, which should be shown by the States of Jersey introducing legislation that allows a gay couple to formally and publicly acknowledge their relationship and the protection it affords."

"In many areas, as far as the law is concerned, same-sex relationships do not exist. In this current day and age this is totally unacceptable"

"For a same-sex couple, the denial of an opportunity to have their relationship recognised provides a number of day-to-day challenges when they attempt to organise their joint lives...for example some partners have been refused a hospital visit to see their seriously ill partner (even when guidance has been issued to stop these situations arising), and same-sex partners have been refused their rightful place at their partners [sic] funeral."

One respondent stated that *"late last year we started a small scale campaign starting with just friends and colleagues to raise awareness of the issue and to try and gather some names for a petition to encourage the States to act on the issue"*. A list of 127 names was attached as part of this submission.

Another respondent included the following information: *"I would also like to draw your attention to the Civil Partnerships in Jersey facebook group and the website <http://www.civilpartnershipjersey.co.uk/index.html>, where a local couple, friends of mine, have set up an online petition to allow civil partnership in Jersey to have information on the site about why we need this legislation"*.

Ms Barbara Corbett, Head of Family Law at Hanson Renouf, commented that: *"The importance of civil partnerships is that they enable people to commit to each other, that they afford protection to one another, and allow couples to be recognised as such. In the UK this has been achieved by giving civil partners all the rights, responsibilities and duties of married couples, without artificially extending an institution which may have resulted in unnecessary complications relating to religion and culture."*

Other respondents were opposed to the principle of introducing civil partnerships legislation. The following representative comments were made:

“Before we pass legislation condoning something that God hates, let us take note that God has shown his displeasure in the past on this issue...I trust Jersey politicians will take heed and not bring the wrath of God upon our lovely Island.”

“...how can it be right for children to have to face the confusion by being brought up by single sex couples? I am both adopted and an adoptive parent and believe my experience from both of these perspectives, taken together with the views of my children on the subject, makes me better qualified than most to be able to comment. When we adopted there was only one consideration – what was best for the baby or child. Now it seems that political correctness, even to the extent of showing positive discrimination, is considered as important.”

Future Implications

A considerable number of respondents focussed on the possible implications associated with introducing civil partnerships legislation. Although these comments do not relate to the specific options outlined in the Green Paper, it is nevertheless important that these concerns are included in this summary.

In its response, the Law Draftsmen’s office emphasised the broader implications of introducing civil partnerships legislation, should it be recommended by the Legislation Advisory Panel: *“The Civil Partnership Law will not proceed in isolation: its impact upon many other aspects of existing Jersey legislation will have to be considered and amendments produced, by Chief Minister’s Department working in conjunction with other, affected, departments. Income tax, social security and income support, public employees’ pensions and adoption are just some areas which will require consideration.”*

Advocate Dessain of law firm Bedell Cristin outlined the following concerns: *“Your consultation document describes the four possibilities open for consideration. It is however, silent on what effect each of the three alternatives (apart from the fourth) would have on the existing law in Jersey (whether statutory or case law). For example what Jersey laws would be affected? What is the consequence of each new status e.g. on inheritance laws, tax laws, adoption laws, liability between the two persons and third parties during the currency of the new status, and on death, dissolution and mental incapacity in old age.”*

In the response from the Social Security Department, a number of potential implications likely to follow from the introduction of civil partnerships legislation were highlighted: *“The contributory system moved to one of individual entitlement in April 2001 however there are still some aspects where married couples have rights such as payments for survivor’s allowance and pension as these may be paid based on the deceased spouse’s social security contribution record. The cost to the social security fund would increase over time as more couples entered into civil partnerships...Changes would also be required to the department’s computer system to ensure new benefit rules were incorporated specifically for Civil Partnerships and this would incur some (not insignificant) cost. The department would also require sufficient time to develop and test the changes... Many of the benefits administered by the department, such as Income Support, treat couples living in a marriage-like relationship in the same way as married couples, including same-sex partners. Therefore, the introduction of civil partnerships would have no implications for these.”*

Similarly, the Department for Education, Sport and Culture identified several issues that would need to be considered should civil partnerships legislation to be introduced in Jersey. Its submission drew attention to the following:

“The main considerations for the Department are with regard to the status of children vis a vis parental responsibility and whether it is desirable for children, potentially, to have four parents who hold varying rights and responsibilities.

There is also an issue in respect of higher education funding. As in other jurisdictions, young people under the age of 25 years are considered to be ‘dependent’ students and, therefore, the size of the contribution made by the States is determined by an assessment of parental or family income. The Department would require clarification as to what would constitute ‘parental or family income’ in a civil partnership situation.”

The submission from the Judicial Greffe and Viscount’s Department outlined several consequences of any proposed legislation from the legal perspective. Consideration would need to be given to the following issues, amongst others:

*“1) the appropriate body and mechanism for dealing with the financial and other consequences of a termination of a ‘civil partnership’, including, alternatively, where bankruptcy (of a party in civil partnership) intervenes;
2) potential amendments to the Wills and Succession (J) Law and the customary law relating to testate and intestate succession;
3) the need to record in the Public Registry the existence of a civil partnership where persons who have entered a civil partnership acquire immovable property in the Island;”*

Response to Consultation

The Legislation Advisory Panel was invited to consider the summary of consultation responses at its meeting of 20 May 2008.

The Advisory Panel recognised that the comments which had been made covered a wide range of opinion and indicated a divergence of views, with most being broad in their approach to the issue and expressing general preferences rather than identifying particular options for the States to implement.

The Advisory Panel, having considered aspects associated with current Human Rights legislation and the known difficulties which had been encountered by the United Kingdom arising from the introduction of civil partnerships in that jurisdiction, concluded that it would wish to pursue the creation of the right to form a civil partnership between both heterosexual and homosexual couples.

It was recognised that there was a need to assess, as accurately as possible, the potential financial and resources cost of implementing such legislation, and the Chief Minister’s Department was asked to undertake such further research as might be necessary, in conjunction with those departments of the States likely to be affected.

Following the outcome of these investigations, the Legislation Advisory Panel is expected to make a recommendation to the Chief Minister on how it is minded to proceed with civil partnerships legislation in Jersey. It is anticipated that the Council of Ministers will be invited to take an ‘in principle’ decision on the matter once it has reviewed all the information that is now available.